COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

DATE: May 13, 1997

TIME: 10:00 a.m.

PLACE: 2237 Rayburn House Office Building

RE: Legislative Hearing (H.R. 231, H.R. 429, H.R. 471, H.R. 1493)`

Thank you for the opportunity to appear before you today to discuss proposals to amend our immigration laws. We are appreciative of the Subcommittee's interest in the views of the Immigration and Naturalization Service (INS).

You have requested the views of the INS regarding the following legislation:

H.R. 429, introduced by Congressman Pickett. This bill would amend the Immigration and Nationality Act (hereafter referred to as "the Act") to provide for special immigrant status for NATO civilian employees in the same manner as for employees of international organizations;

H.R. 471, introduced by Congressman Gallegly. This bill would amend the Act to prohibit the counting of work experience of an unauthorized alien for purposes of admission as an employment-based immigrant or an H-1B nonimmigrant; and,

H.R. 1493, also introduced by Congressman Gallegly. This bill would require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States.

H.R. 429: The "NATO Special Immigrant Amendments of 1997."

H.R. 429 would add a new subparagraph to section 101(a)(27) of the Act, which defines special immigrants. The bill would include immigrants who are or were NATO officers or employees within the existing subparagraph (I) of section 101(a)(27) which would mean that the group of persons eligible would also include unmarried sons and daughters, spouses, and surviving spouses.

In effect, H.R. 429 provides for special immigrant status for retired NATO civilian employees and their families in the same manner as for employees of other international organizations. Treating NATO personnel more akin to personnel employed by international organizations has been an evolutionary pattern, and one which is not inconsistent with the Act. We do not oppose this proposal and do not foresee any budgetary or resource impact on the Service if this bill should be enacted.

H.R. 471: The "Illegal Alien Employment Disincentive Act of 1997."

H.R. 471 would add a new paragraph "(7)" to section 203(b) of the Act and a new subsection "(l)" to section 214. The new paragraph 203(b)(7) will disallow work experience obtained by an alien when the alien was not authorized to work in the United States as qualifying work experience for an employment-based visa. The new subsection 214(l) would have the same effect regarding H-1B nonimmigrant visas.

Pursuant to H.R. 471, unauthorized work experience would not count for purposes of admission as an

employment-based immigrant or an H-1B nonimmigrant. The basic premise of this legislation is consistent with the intent of provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that preclude aliens from obtaining credit or status based on violations of the Act. It would also foster compliance with existing employment authorization requirements. The Administration supports the general intent of this proposal.

However, we see two administrative problems with this bill as drafted. First, as written, the bill could be read as requiring INS to go through a verification process for all periods of U.S. employment claimed by the beneficiary to determine if each employment experience in the U.S. was authorized. This would be very labor intensive, and would add substantially to the cost of processing a visa petition. The effect of this bill on the administrative process and costs would be mitigated by amending the provision to require a petitioning employer to demonstrate that the past employment of a worker was authorized. This could be accomplished by the submission of copies of employment authorization documents or I-9 forms. For employment that was authorized incident to a nonimmigrant status, a copy of the annotated I-94 document should be sufficient in most cases. However, some cases, for example non-immigrants from Canada, are not currently documented with an I-94. This will present problems of proof, but should be able to be addressed by regulation.

Second, we suggest that the restriction be limited to the proposed immigrant categories. The problem the bill seeks to redress would appear to be more prevalent with respect to immigrant visa petitions. Alternatively, we would recommend that any restriction on nonimmigrant visas be applied to all employment related non-immigrant categories, not just the H-1B category, which relates to fashion models and persons in specialty occupations.

H.R. 1493: Establishing a program for the identification of deportable aliens awaiting arraignment.

The third bill under consideration, H.R. 1493, would require, within six months of enactment, the detail of at least one INS officer to each of no fewer than 100 local detention facilities on a full-time basis. Under the bill, identification of an alien as deportable must be completed prior to arraignment so the INS can advise the judge of its intentions with respect to deportation at the time of the arraignment hearing. The bill contemplates that an INS officer would be on duty during peak booking periods including those which occur during the night and presumably on weekends.

The INS supports the idea of identifying aliens who are deportable during the period of criminal incarceration. We have long adhered to the importance of and worked towards identifying and removing criminal aliens and other deportable aliens, particularly in our nation's prisons. Our objective is to permit a timely adjudication of deportability while the person remains in corrective custody so that he or she may be deported promptly upon release. This is the basis for the Institutional Hearing Program (IHP) and our active presence in county and local prisons across the country. In our efforts to develop these programs, we have carefully considered how to use most effectively our limited resources as a component of the Administration's overall enforcement strategy to identify and remove deportable criminal aliens from penal institutions. Efforts such as these, and the dedication of unprecedented resources in recent years, have resulted in a record number of removals of criminal and other deportable aliens both in FY 1996 and thus far in FY 1997. In FY 1996, the INS removed a record 68,000 criminal and other deportable aliens -- up 36 percent over results achieved in FY 1995, itself a record year. The momentum has carried over in FY 1997. In the first half of FY 1997, removals have increased by 28 percent for the same period in FY 1996. This percentage will increase after we have reviewed all field reports.

The IHP is a cooperative effort among INS, the Executive Office for Immigration Review, and various correctional agencies designed to identify criminal aliens within state and federal correctional institutions, to complete deportation proceedings for convicted aliens while they are still serving their prison sentences, and to remove expeditiously all deportable criminal aliens upon completion of their sentences. IHP hearings are conducted at 74 sites in 39 states and the District of Columbia. Of the 74 sites, 59 are in state facilities, 11 are in U.S. Bureau of Prison facilities, and 4 are in county jails. Our vigorous efforts have resulted in a greater number of adjudications, completions of criminal cases, and removals of criminal aliens. As part of the IHP in FY 1996, we interviewed almost 40,000 foreign-born inmates and removed

10,325 criminal aliens. Our goal for FY 1997 is to remove 14,000 aliens through the IHP program. At the midyear point in this fiscal year, the Service had removed 6,738.

Under our county and local jail program, the INS maintains a regular presence in prisons across the country. As FY 1997 resources for county jail projects are fully deployed, INS will have a permanent presence in the seven largest county jails in the country and a regular presence in many other county and local facilities. For example, we maintain an active presence in seven county jails in Southern California serving Los Angeles, Orange, Riverside, Ventura, San Bernadino, Santa Barbara, and San Diego counties. The latest county jail initiative was launched two weeks ago in Riverside. We will continue this expansion into FY 1998 and beyond, as resources allow.

The Service believes that our county and local jail program and the IHP are evidence of partnerships that work effectively to identify criminal aliens and continue to promote the efficient use of INS resources. We appreciate Congress' support for these programs.

In addition, IIRIRA contains several provisions for the identification of criminal aliens and aliens unlawfully present in the United States, upon the request of State and local entities. These provisions provide the INS with authority to expand our efforts to identify these individuals. We have already put in place some of these new enforcement requirements and are in the process of developing the plans for others. For example, under section 329 of IIRIRA, the INS has been conducting projects at jails in Anaheim, California and Ventura County, California to identify, prior to arraignment on criminal charges, aliens unlawfully present in the United States. We are in the process of evaluating these projects.

The purpose of H.R. 1493 -- the early identification of deportable aliens in the criminal justice process -- is consistent with the agency's goals, and we strongly support the idea. However, because H.R. 1493 raises serious resource and other concerns, we cannot support the bill. Nothing in H.R. 1493 adds to the Attorney General's existing authority to station INS officers at local facilities for the purpose of early identification of deportable aliens. It simply re-directs the allocation of existing resources without authorizing additional resources. The bill assumes that funding for the required full-time details will be drawn from the existing base. In a preliminary assessment, INS estimates that this legislation would cost 900 positions, 447 FTEs, and $90,717,000.

This legislation could mean the forced diversion of INS resources away from priority enforcement programs which produce greater enforcement results. INS enforcement resources are assigned in a manner consistent with the agency's enforcement priorities. Those include border control, the removal of criminal and other aliens, antismuggling, worksite enforcement, national and local multiagency crime task forces, anti-fraud enforcement, and asset forfeiture. As an example, approximately 20% of our investigative resources are assigned to crime task forces, including those to combat drug smuggling, terrorism, organized crime, and violent gangs.

We must first assure adequate coverage of the larger Federal, State and local facilities before focusing on smaller facilities in scattered locations. In our experience, this approach has proven to be the most effective use of resources to identify and help remove deportable criminal aliens. In the end, this legislation, however unintentionally, may hinder our efforts to target our worst and most serious offenders -- aliens incarcerated for criminal convictions. Instead, we would be required to refocus limited resources on individuals who are not arraigned and may not be deportable.

We appreciate the support of the concept of INS assisting local law enforcement agencies in this manner. As drafted, the bill jeopardizes progress we have made to remove more serious and dangerous convicted criminals for the sake of attempting to remove individuals who have not yet been arraigned. While that may be the appropriate law enforcement step to take in some or most instances, there are equal, if not more compelling, public safety and criminal justice needs for civil immigration violations to take a back seat to local, state, and federal prosecutions of crimes. Before requiring the expansion of INS local jail presence to 100 jurisdictions around the country, we urge the subcommittee to review the outcome of INS' current work in county and local jails and to assess these results. This will provide the proper framework and analytical

support to justify a request for additional resources so as not to take away from INS removals of more serious and dangerous convicted criminals.

Again we appreciate the invitation by the subcommittee for the views of INS on these bills. I will be pleased to answer any questions.